FILED SUPREME COURT STATE OF WASHINGTON 9/25/2024 BY ERIN L. LENNON CLERK

Case #: 1034938

No. 23-2-00303-18

SUPREME COURT OF THE STATE OF WASHINGTON

ANGELA E. HELVEY, APPELLANT vs.

EMPLOYMENT SECURITY DEPARTMENT AND TACOMA PUBLIC SCHOOLS,

RESPONDENTS

PETITION FOR REVIEW for Writ of Certiorari

Angela Helvey *Pro se*

231 S 177th Pl Burien, WA 98148 helveya@gmail.com

I. INTRODUCTION/COURT OF APPEALS DECISION

This is an appeal, under RAP 13.4(a), of a decision by the Court of Appeals of July 29, 2024, (Exhibit 1), in which they affirmed the Kitsap Superior Court's action of denial (6/23/23), as well as the Commissioner of ESD's denial, because Appellant had not timely served the ESD; rather, *she only* served the WA Attorney General's Office, and Tacoma School District, timely, until the Attorney General's Office asked her to serve the ESD also, which she did on 3/3/23, after the deadline. Appellant has timely filed the petition with the proper Court of Appeals and Superior Court; administrative remedies are now exhausted, and Appellant is aggrieved by the decision, so is appealing now. Appellant asks the court to reverse the administrative hearing decision and restore her unemployment benefits in this matter; she was laid off her subbing position with Tacoma PS on 3/13/20.

(more)

II. ISSUES PRESENTED FOR REVIEW

1. Appellant had not been able to participate in the hearing of 10/9/22, because her mail had been forwarded (Kent to Bremerton) incorrectly. Appellant chose to submit a *Petition for Reconsideration* on 11/14/22, but she had not even received her *Notice of Hearing* by that time; not until 1/24/23 – a 3-month delay!

1-A. BACKGROUND

Appellant's deadline was 11/14/22 for her *Petition for*Review; Appellant first attempted to file one on 12/6/22 after
finding out about her missed hearing on 12/4/22, yet looked
the address up on the Internet instead of looking again at the
court document instructions from Judge Valdez, and sent it to
the wrong address (Bristol Ct SW) and it could not be
forwarded(!). Appellant attempted to file, then, on 12/12/22,
but it was not accepted as it was more than 5 pages. Appellant
revised it and re-filed again on 12/19/22; it was accepted, yet

Appellant sent one more letter to the Commissioner on 12/30/22 to replace it, with refined exhibits so she could show more material facts, but this wasn't accepted; the documents and exhibits had not been stapled together (they did not fit under 1 staple). This means those exhibits were not considered. The Office of Administrative Hearings had attempted to email Appellant 3 times, but it was "campaign season," and she was deluged with messages and didn't see them until too late. The Commissioner ruled against her on January 20, '23 as being late by 35 days; she had just sent another *Petition for Review* on 1/17/23. Appellant's last Petition was filed on 2/2/23, detailing USPS' mail forwarding mistake, that of a *federal entity*, which made her miss her Notice of Hearing in the mail, and the 10/12/22 hearing itself: Appellant was not offered a chance to be heard, then. Appellant then appealed to Kitsap Co. Superior Court.

2. Appellant did not timely file her judicial appeal on ESD

only because she was waiting to hear back from Kitsap Superior Court about her application for a fee waiver/informa pauperis, though she did serve the AG's Office timely, on Feb. 15; their attorney. Is this "good cause"? Appellant thinks so. (WAC192-04-090)

2-A. BACKGROUND

As Appellant illustrated in her *Brief of Appellant*, she tried to obtain confirmation of her fee waiver (in forma pauperis) request from the court, and to find out, first, if her *Complaint* of 2/8/23 had been filed Appellant illustrated how she had been referred to **Ex Parte' clerk** Tricia Croston, who simply did not reply to Appellant's phone calls and emails for assistance in determining that. Appellant did not find out it had indeed been filed until Assistant AG David Moon confirmed it, giving her the case number in late February. Appellant believes that after finally learning it had been filed, she had forgotten to then send a copy to ESD; she suspects it is because she was still waiting to hear back about pauper status.

Appellant had not mentioned her struggles with Kitsap Superior Court, and the appeal process, in her *Motion to* Continue of 5/18/23 because she didn't realize she should have, until she was dismissed by Kitsap Superior Court on 6/23/23 (and again on 6/28/23, when she filed a Motion for Reconsideration). Appellant did note, in her Notice of Appeal to the Court of Appeals of 7/21/23, that in February '23 she was waiting to hear back from Kitsap Superior Court regarding her In Forma Pauperis request before she proceeded in the matter. She realized on 3/1/23 that not filing with ESD was a gross error on her part, however, Appellant was "not familiar with administrative law matters," (Wells 61Wn. App. at 315); "the Department presented no evidence that (Appellant) had any experience with administrative procedures." Appellant "lacked prior experience with unemployment procedures in administrative appeals," as did *Devine* (26 Wn. App. 778, 781, 782 (Wn. App. 1980.) Devine and Wells v. ESD, 61Wn. App. 306, (1991) are both cited regarding Title 50 Statute RCW

50.01.010, the preamble to the code, at end: "This title (RCW 50.01.010) shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum." AG Eikenberry, in Wells, states, "In determining whether an unemployment insurance claimant had "good cause" under RCW 50.32.075, for a late filing of an administrative appeal, the delay may be excusable even if it was not beyond the claimant's control." Wells further states: "(Clifford Wells) was required to determine the advisability and method of filing an appeal without the assistance of counsel," as has this Appellant. (Appellant reiterates that laypeople can't easily manage an unemployment matter when needing to work, too; one must also hire an attorney, somehow, in order to win the case, most often.) Wells goes on, "In light of this mandate to liberally construe the statute in favor of unemployed workers, we are unwilling to conclude that the Legislature (intended) to deprive the unsophisticated applicant of the opportunity to have

his(her) benefits claim heard on the merits. In Love v.

Pullman Co, USCoA, 10th Circuit 1/26/1978, 569 F.2d 1074;

92 S.Ct. 616 (1972), the U.S. Supreme Court stated

"technicalities are particularly inappropriate in a statutory
scheme in which laymen (pro se litigants), unassisted by
trained lawyers, initiate the process."

Appellant faced "the run-around" with Kitsap Superior Court (see email exchange below), which seriously jeopardized her ability to timely file her *Complaint* with ESD, thinking, from prior *pro se court* filings, she need wait for *in forma pauperis* status. The court was not helpful at all in responding to Appellant's questions timely, because, for one thing, she had emailed superior court (district court, first!), rather than ex parte' court, and because ex parte' court may have had a clerk, Tricia Croston, out on vacation at the time, as near as Appellant can figure (Clerk Tamra Cook was not mentioned until later, another problem for Appellant). Appellant began

emailing Superior Court regarding jurisdiction for her Appeal

on 1/29/23, but did not receive satisfactory help until 3/2/23, a

month later! Here is a sample of the difficulties Appellant

had with Kitsap Superior Court:

From: Angela Helvey <helveya@gmail.com>

Sent: Sunday, January 29, 2023 7:20 PM

To: Superior Court <superiorcourt@kitsap.gov>

I lost an appeal regarding my unemployment benefits, and will be appealing it again, through your court. I just want to make sure that is the correct decision, as far as jurisdiction is concerned (I live in Bremerton).

Angela E. Helvey 406-217-8698

From: Superior Court <superiorcourt@kitsap.gov>

Date: January 30, 2023 at 8:09:54 AM PST

To: Angela Helvey <helveya@gmail.com>

Cc: Tricia Croston <TCroston@kitsap.gov>

Subject: RE: "I am not sure." (Note: This is probably from

Melanie Settlemier, who replies later, showing her

name.) "Let me cc one of the supervisors in the clerk's

office. They are the keeper of the record and would be where

you file."

Appellant never heard back from Croston, and when she met her in the court after June 23, in filing her "Motion for Reconsideration," Croston said she had "nothing" from Appellant in her emails. Why not?? Tamra Cook did not assist in her place, either.

Fri. Feb. 24 from Angela Helvey to Kitsap Superior Ct:

Hello,

I have filed a *Complaint/Appeal* in your court in early Feb., because apparently that is the correct court, but have not heard back from you. I submitted an "In Forma Pauperis" document also, so that took some time for the judge to review, I'm sure. Please respond.

During this time, Appellant tried repeatedly to reach Tricia Croston, Clerk, by phone and email. She was unsuccessful: appellant believes she was on vacation for 2 weeks or more. When Appellant asked her about the situation in late June '23, Croston laughed and said she didn't remember

what she was up to then.

More from Appellant's court emails:

Superior Ct to Angela, Feb 24 at 11:28 a.m.:

The clerk's office would have the information; I will cc them.

Angela to Superior Ct, Feb 24 at 1:47 p.m:

Yes, thanks. (They should have responded as it's been almost 3 weeks.)

Melanie Settlemier to Angela, Mar. 1 at 3:59:

I am forwarding this email to the Appeals Clerk. She is out of the office today, but will respond as soon as she can.

Melanie to Angela, Mar. 2, 9:44 a.m.

I think the only Appeal type case we do here regarding the state, is the DOL. I will let the appeals clerk know you figured it out.

Angela to Melanie S, Mar. 2, 11:01:

However, that is the same agency!! DOL is part of ESD, I think. And, the Assistant Attorney General, David Moon, said in a letter I just got that Superior Ct had put the number 23-2-0303-18 on my file. In your email address it doesn't state which court you are the clerk of; district or superior?

Melanie S to Angela., Mar. 2, 11:17 a.m.:

Superior Court.

Appellant did not have "full access to legal services"

(WAC Order 25700-A-1249) with Superior Court, then, or in getting the assistance of legal aid entities, as mentioned previously.

3. Appellant wishes to note that her initial matter was incorrectly decided by the ALJ, in her Tacoma Public Schools layoff matter, with a denial of unemployment benefits. The layoff took place during the pandemic; layoffs became normal. The new Tacoma PS' Substitute Supervisor, Collette Stewart, should have realized Appellant was laid off (on 3/13/20, by Teresa Greiwe, former supervisor), and did not quit; again, Appellant did not get a chance to defend herself in a hearing. (She did formally quit the position later, in order

to qualify for Emergency Housing benefits in the pandemic, but she should not be penalized for this.) Appellant would not have had to appeal if benefits had been granted, and then jeopardize those benefits in being unclear about the administrative review process.

4. ESD Needs Better Instructions for Administrative Review Process, and Some Hints. Appellant found, in writing this "pro se case", that ESD has not been explicit enough in its "administrative review process instructions" for a layperson such as herself to successfully file this type of case. For example, an important ESD note would have been for litigants to remember to submit an SASE with a court pleading (to Kitsap Superior Court, for example) when mailing a complaint. Appellant had mailed her complaint on 2/6/23, and it was filed on 2/13/23, she found (in March). As Appellant stated in previous pleadings, "Laypeople can't easily manage a matter this large, and the only alternative is to hire

an attorney, somehow coming up with a \$5,000 retainer, when one doesn't even know how much their claim is worth." ESD cannot easily "see" the way a "new" plaintiff in Superior Court sees things, especially regarding appellants not realizing there is no need for the in forma pauperis process in an administrative review. A hint about an "ex parte" court, and a suggestion appellants may need to work with one in their matter, if necessary in that jurisdiction, would also be helpful from ESD: Appellant did not know to ask to speak to the Ex Parte' section of the Kitsap Superior Court. Other hints should appear, also: that the documents submitted for a Commissioner's Review should total 5 pages including Exhibits, stapled into one stack. (Appellant believes it possible that ESD did not even read her last Petition for Reconsideration because the documents had not been stapled together, yet the "pile" of documents she had submitted did not fit under one staple.) Nor does ESD describe "remote hearings" in its literature about the process of an

administrative review, about the court Zoom hearing process; the Unemployment Law Project does not discuss the Zoom process, either, in its literature. ESD should suggest, too, that appellants consider creating a new email address, so they can dedicate it to any information coming from ESD or the courts. (Appellant has missed many important messages without a dedicated court-business email.) Another helpful aid for appellants would be a page with information about legal aid, i.e., the NW Justice Project, (when Appellant called them in May '23, an AI message told her they were simply too busy to assist; they were still catching up, due to the pandemic.) The Unemployment Law Project had budget constraints, perhaps; an agent wrote in January '23, in reply to Appellant's email: "My office doesn't have the resources to review your Petition for Review, but stress in there why you missed the hearing." Appellant believes the effects of the pandemic should result in more lenient court rulings for those seeking unemployment benefits through appeals, as

a year and a half.) Appellant had forgotten to continue to check the OAH portal often, in the delay. "Reasonable accommodation, "i.e., leniency, in court decisions regarding pro se litigants is suggested in WAC 25700-A-1399, and should be especially present for pandemic matters. The courts have thus far, in Appellant's matter here, not been amenable to acknowledging that Appellant had not received her *Notice of Hearing* timely, and to making an allowance for it.

III. ARGUMENT

Appellant found several Washington cases relevant to her matter, already noted, and another is also relevant: *Rasmussen v. Employment Security*, 30 Wn. App. 671, 638 P.2d (WA Ct App. 1981), showed Judge C.J. McInturff dissenting, stating s/he "dissents from the conclusion reached by the majority regarding the third criterion: *excusability of the error*. When lay persons confront administrative time frames for appeal (as

short as 10 days), there will occasionally be late filings *due to* unavoidable circumstances, inadvertences (inattention), or excusable neglect." Appellant was faced with "unavoidable circumstances" relative to her lack of knowledge about the administrative appeal process, i.e., wrongly waiting to receive pauper status before proceeding with service on ESD. Appellant hopes the court can put aside the matter of a late ESD filing, as the AG's Office was served timely, in light of the difficulties she has faced. Most people work "paycheck-topaycheck," and it seems disingenuous for ESD to think their appellants would have a large sum of money to help them to secure a win of their appeal. Thus, Appellant asks that the Court disregard her lateness in filing her *Complaint* with ESD.

VII. IN CONCLUSION

Kitsap Co. Superior Court's *Order of Dismissal* of 6/23/23 should be struck, when viewed in light of the Appellant's whole record before the court. Appellant believes the judges in this

matter could have used the WAC Statute of 192-04-090, regarding good cause, largely due to the Appellant's difficulties in working with Kitsap Superior Court, rather than issuing a motion for disqualification: Appellant should be allowed "back" unemployment benefits in this matter with Tacoma Public Schools, WA.

Respectfully submitted to the Court this 27th day in August,

2024.

Angela Helvey, Appellant *Pro se*

August 27, 2024

VIII. CERTIFICATE OF SERVICE

This certifies that a true and correct copy of this *Petition for* Review was filed in the court portal, and emailed to Respondents WA Attorney General's Office, and to Tacoma Public Schools, at their email addresses below.

Angela E. Helvey, Appellant/Pro Se

August 27, 2024

Respondent emails: benjamin.wedeking@atg.wa.gov; LalOlyEF@atg.wa.gov; and khilen@tacoma.k12.wa.us

Attorney General's Office 1125 Washington St, Box 40100 Olympia, WA 98504-0100

Tacoma Public Schools 601 S. 8th St Tacoma, WA 98405

IX. APPENDIX

Certificate of Compliance with RAP 13.4: 14-point type. Total word count: **2,892 words.**

FILED 9/3/2024 Court of Appeals Division I State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ANGELA HELVEY,

Appellant,

٧.

EMPLOYMENT SECURITY DEPARTMENT, STATE OF WASHINGTON,

Respondent,

TACOMA PUBLIC SCHOOLS,

Defendant.

No. 86626-5-I

DIVISION ONE

UNPUBLISHED OPINION

COBURN, J. — Angela Helvey was denied unemployment benefits by the Employment Security Department (ESD). After failing to appear at a scheduled hearing, Helvey filed a petition for review, which was denied, and a notice of appeal for judicial review. The superior court granted ESD's motion to dismiss the appeal because Helvey failed to timely serve ESD. Helvey appeals arguing that because she timely served the Attorney General's office, she properly served ESD because the attorney general is ESD's attorney and that her late appeal should be excused because she is a pro se litigant. We disagree and affirm.

FACTS

Helvey claims she was laid off on March 13, 2020 from her position as a substitute teacher with Tacoma Public Schools due to the COVID-19 pandemic. As a result, Helvey started applying for unemployment benefits. On December 10, 2021, the Employment Security Department (ESD) issued a determination letter denying Helvey benefits. Helvey filed a timely appeal and the Office of Administrative Hearings (OAH) scheduled a hearing for October 12, 2022 at 10:30 a.m. The employer appeared at the hearing, but Helvey did not call in to participate. After waiting 15 minutes, an Administrative Law Judge (ALJ) found that "all interested parties have been provided a reasonable opportunity for a hearing," and found Helvey in default.

In a written decision mailed on October 13, the ALJ dismissed Helvey's appeal because she failed to appear at her scheduled hearing the day before. Attached to the order is information and instructions on how to appeal the ALJ's decision, which states that a petition for review must be filed within 30 days of the order with the Commissioner's Review Office of ESD.

Helvey filed a petition for review on December 19. The Commissioner of ESD stated that the petition was due on November 14, 2022 and, because there were no assertions as to why the petition was filed untimely, the petition was dismissed. Helvey then filed a petition for reconsideration, which was denied by the Commissioner on January 20, 2023 because there was "no obvious material, clerical error in the decision, nor does it appear that the petitioner was denied a reasonable opportunity to present argument." Attached to the denial from the Commissioner were directions on how to apply for judicial review. The directions state that judicial review appeals need to be

taken to the superior court within 30 days of the order and must be served to both the superior court and the Commissioner of ESD.

On February 8, Helvey first filed a notice of appeal for judicial review to the superior court. In addition to ESD, Helvey named OAH as defendants in her appeal.

Helvey did not serve her notice of appeal to the Commissioner of ESD until March 3, 2023. It appears that Helvey had also mailed a copy¹ to the "AG's Office" in Olympia the same time she mailed notice to the Commissioner of ESD. On May 8, ESD moved to dismiss the appeal for judicial review because the appeal was served to them untimely. In addition to their motion to dismiss, ESD submitted a declaration affidavit of Robert Page, a public records manager for ESD, which stated that ESD received Helvey's judicial appeal on March 3, 2023. The affidavit stated that "Helvey's 30-day time limit for delivering a petition for judicial review to the Employment Security Department expired on February 21, 2023."

Helvey filed a memo in opposition of the motion to dismiss, stating that she was "entitled to a new hearing through OAH" because she never got the chance to present her arguments to obtain unemployment benefits. ESD then filed a reply in support of motion to dismiss, stating that Helvey's memo failed to address why the motion to dismiss should be denied and that she goes beyond the scope of the motion. The superior court granted the motion to dismiss. Helvey filed a motion for reconsideration, which was denied.

¹ Helvey used a notice of de novo appeal form to file her initial notice of appeal in Kitsap Superior Court. Helvey prepared a "COMPLAINT/APPEAL" pleading naming ESD, OAH, State of Washington, and Tacoma Public Schools as defendants. It is that pleading that she mailed to ESD and the "AG's Office."

Helvey appeals both the order of dismissal and the denial of the motion for reconsideration.

DISCUSSION

Helvey argues that the superior court erred when it dismissed her appeal because, while she did not timely file her notice of appeal with ESD, she did timely file with the Attorney General's office. Helvey argues that the Office of the Attorney General is the attorney for ESD, therefore she did properly serve ESD by serving its attorneys. This court considered and rejected this same argument in Cheek v. Emp't Sec. Dep't, 107 Wn. App. 79, 84-85, 25 P.3d 481 (2001).

The judicial review of unemployment benefit decisions is governed by Washington's Administrative Procedure Act (APA), chapter 34.05 RCW. Smith v. Emp't Sec. Dep't, 155 Wn. App. 24, 32, 226 P.3d 263 (2010). This court acts from the same position as the superior court in applying the APA standard. Id. The APA requires that a "petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order." RCW 34.05.542(2).

The Commissioner's Review Office issued Helvey its final order on January 20, 2023. The issuance of the order included instructions explaining that in order to further appeal, appellants must "serve a copy of your judicial appeal by mail or personal service within the thirty (30) day judicial appeal period on the Commissioner of the Employment Security Department, the Office of the Attorney General, and all parties of record." Helvey did timely file her notice of appeal with the superior court on February 8, 2023 but did not timely serve ESD, which did not receive a copy of the notice until March 3,

2023, 42 days after the final order. Service on ESD is made when a copy of the petition for judicial review has been received by the Commissioner's Office. Stewart v. Emp't Sec. Dep't, 191 Wn.2d 42, 47, 419 P.3d 838 (2018) (citing RCW 34.05.542(4); WAC 192-04-210).

First, Helvey presented no evidence that she *timely* served the Attorney General's office. Second, even if Helvey timely served the Office of the Attorney General, the record does not establish that anyone from the Attorney General's office was the attorney of record in this matter on behalf of ESD. RCW 34.05.542(2) requires the appeal for judicial review must be served on both ESD and the Office of the Attorney General. See Cheek, 107 Wn. App. at 84 (rejecting an argument that service upon the Attorney General was timely service on ESD when the Attorney General was not yet the attorney of record for ESD, which had not filed a formal notice of appearance through the Office of the Attorney General).

Helvey also argues that the late appeal should be excused because she "had great difficulties" and is a pro se litigant. "A pro se litigant is held to the same standard as an attorney." West v. Wash. Ass'n of County Officials, 162 Wn. App. 120, 137 n.13, 252 P.3d 406 (2011). As a pro se litigant, Helvey had to comply with the same standard and rules of procedure on appeal as attorneys in filing her appeal on time. Id. "It is impossible to substantially comply with a statutory time limit . . . It is either complied with or it is not. Service after the time limit cannot be considered to have been actual service within the time limit." City of Seattle v. Pub. Emp. Rels. Comm'n, 116 Wn.2d 923, 928-29, 809 P.2d 1377 (1991)).

Because Helvey did not timely serve ESD, she failed to invoke the superior court's appellate jurisdiction as prescribed by the law, and the court correctly dismissed the case. See <u>Stewart</u>, 191 Wn.2d at 44-45. The commissioner's decision became final when Helvey failed to perfect her petition for judicial review within 30 days. <u>Id.</u> at 54 (citing RCW 50.32.090).

Colum, J

Mann,

We affirm.²

Smith, C.g.

WE CONCUR:

² We decline to address Helvey's appeal of the denial of her motion for reconsideration because Helvey failed to designate her motion for reconsideration for appeal and also failed to substantively address the issue in her opening brief. See Palmer v. Jensen, 81 Wn. App. 148, 153, 913 P.2d 413 (1996) ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.").

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals of the State of Washington

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July 29, 2024

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Case #: 866265 Angela Helvey, Appellant v Employment Security Department, et al, Respondents Kitsap County Superior Court No. 23-2-00303-1

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

We affirm.

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely.

Lea Ennis

Court Administrator/Clerk

law

c: The Honorable William Houser

ANGELA HELVEY - FILING PRO SE

August 27, 2024 - 6:36 PM

Transmittal Information

Filed with Court: Court of Appeals Division I

Appellate Court Case Number: 86626-5

Appellate Court Case Title: Angela Helvey, Appellant v Employment Security

Department, et al, Respondents

Superior Court Case Number: 23-2-00303-1

The following documents have been uploaded:

• 866265 Petition for Review 20240827183516D1602977 4655.pdf

This File Contains: Petition for Review

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Comments:

(I filed a fee waiver.)

Sender Name: Angela Helvey - Email: helveya@gmail.com

Address:

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Burien, WA, 98148 Phone: (406) 217-8698

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